

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DUNKIN' DONUTS, INC., and	:	CIVIL ACTIONS
THIRD DUNKIN' DONUTS REALTY,	:	
INC.,	:	
	:	
v.	:	
	:	
GUANG CHYI LIU,	:	
SUSAN YEH LIU and	:	No. 99-3344
G.C.S.L. CO., INC.	:	No. 00-3666

MEMORANDUM ORDER

J. M. KELLY, J.

FEBRUARY , 2001

Presently before the Court is the second Emergency Motion to Stay Injunction filed by the Defendants, Guang Chyi Liu, Susan Yeh Liu and G.C.S.L. Co., Inc. ("Defendants").¹ In this case, Plaintiffs Dunkin' Donuts, Inc. ("Dunkin'") and Third Dunkin' Donuts Realty, Inc. ("Dunkin' Realty") filed suit against the Defendants, alleging breach of contract, trademark infringement and unfair competition. Plaintiffs sought preliminary and permanent injunctions against the Defendants. After conducting evidentiary hearings, Magistrate Judge Thomas J. Rueter issued a Report and Recommendation that the Court issue a preliminary injunction. Despite Objections to that Report filed by the Defendants, the Court adopted and approved it and granted Plaintiffs' Motion for a Preliminary Injunction.

Before the preliminary injunction was executed, Defendants

¹ It should be noted that the Defendants filed the instant motion pro se, and G.C.S.L. Co., Inc. cannot represent itself in such a manner.

then filed their first pro se Emergency Motion to Stay Injunction on January 16, 2001.² Because the Defendants failed to serve a copy of that motion on opposing counsel, or even their own counsel, the Court denied the motion without prejudice on January 17, 2001. On January 23, 2001, the Defendants filed this, their second Emergency Motion to Stay Injunction.

In the interim, however, Defendants also vacated the property owned by Dunkin' Realty and stopped using Dunkin's proprietary marks. Because it appears the Defendants are asking the Court to prevent from occurring that which has already occurred, the Court will deny their motion. See, e.g., EEOC v. Laidlaw Waste, Inc., 934 F. Supp. 286, 288 (N.D. Ill. 1996). Moreover, the Defendants present neither evidence nor arguments that they did not already raise, with the benefit of counsel, in opposition to the Plaintiffs' Motion for Preliminary Injunction. Even if they had, they would have been unable to convince the Court that they are entitled to injunctive relief. First, the Court's earlier finding that Plaintiffs have a likelihood of success on the merits precludes the Court from finding that, for purposes of this motion, Defendants have a likelihood of success on the merits of the same issue. Second, the Court already found

² Defendants also filed a pro se appeal to the United States Court of Appeals for the Third Circuit, which was denied. Shortly thereafter, counsel for Defendants filed a Motion to Withdraw from representing them.

that any damage to the Defendants would be only pecuniary, and thus not irreparable; the Defendants implicitly ask the Court to revisit this finding as well. Third, irreparable injury to Plaintiffs would result from issuing an emergency stay in this matter because the Court, in issuing the preliminary injunction, already found that irreparable injury would result to Plaintiffs if the Defendants continued using their premises and proprietary mark in a manner that was likely to confuse Dunkin's customers.

Accordingly, based upon the foregoing, it is **ORDERED** that the Emergency Motion to Stay Injunction Pending Appeal filed by the Defendants (Doc. No. 123) is **DENIED**.

BY THE COURT:

JAMES MCGIRR KELLY, J.